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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN FRANCISCO DIVISION**

10
11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

14 CHRISTOPHER SELLS and TIMOTHY
MURAWSKI,

15 Defendants.
16

Case No. 11-cv-04941 CW (NC)

**ORDER GRANTING MURAWSKI'S
MOTION FOR DISCOVERY
SANCTIONS**

Re: Dkt. No. 93

17
18 In this securities action alleging fraud in revenue recognition, defendant Murawski
19 seeks discovery sanctions of \$6,942.50 against the SEC. The sanctions motion follows
20 Murawski's successful motion to compel responses to three interrogatories. Those
21 interrogatories requested information provided to the SEC by three third-party witnesses
22 interviewed by the SEC in 2010. The central question presented is whether the SEC's
23 objections to the requested discovery were "substantially justified." The Court finds that
24 the SEC's objections were not substantially justified because the Court had previously
25 overruled similar objections in this case. As a result, the Court grants the sanctions motion
26 and orders the SEC to pay \$6,942.50 in expenses incurred by Murawski in making the
27 motion to compel.

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1 Murawski's sanctions motion requires a straightforward application of the Federal
2 Rules of Civil Procedure. Under Rule 37(a)(5)(A), if the Court grants a motion to compel
3 discovery, the Court "must" require the party whose conduct necessitated the motion to pay
4 to the moving party the reasonable costs, including attorney's fees, incurred in making the
5 motion. Here, the undersigned Magistrate Judge granted Murawski's motion to compel
6 three interrogatory responses, finding that Murawski had presented more than adequate
7 reasons to justify production of the requested information. Dkt. No. 91, Feb. 4, 2013 order.
8 The SEC objected to the order. Chief District Court Judge Claudia Wilken upheld the
9 order. Dkt. No. 106. The SEC is the party whose conduct necessitated the motion.

10 Rule 37, however, sets forth three exceptions to the loser "must pay" sanctions rule.
11 The Court "must not" order payment if: (i) the movant filed the motion before attempting in
12 good faith to obtain the disclosure or discovery without court action; (ii) the opposing
13 party's nondisclosure, response, or objection was substantially justified; or (iii) other
14 circumstances make an award of expenses unjust.

15 Here, based on the declarations submitted by Murawski's counsel, the Court finds
16 that Murawski attempted in good faith to obtain the discovery before filing the motion to
17 compel.

18 The deciding question is whether the SEC was "substantially justified" in objecting to
19 the interrogatories on the basis of the work-product doctrine. Here, the Court finds that the
20 SEC's objections were not justified. The SEC asserts that any sanction would "amount to a
21 punishment for good faith compliance with this Court's prior, August 31 Order." Dkt. No.
22 98 at 12. In the August 31 order, the Court granted in part and denied in part an earlier
23 motion to compel by Murawski arising from his requests for documents, interrogatories and
24 admissions. Dkt. No. 66. The Court disagrees that anything in the August 31 order can be
25 interpreted to support the SEC's blanket work-product privilege assertions for the three
26 third-party witnesses subject to the second motion to compel. In the August 31 order, the
27 Court found that Murawski "may use searching interrogatories to reveal the facts in the
28 possession" of the SEC. *Id.* at 7 (internal quotations omitted). The Court overruled the


1 SEC's work-product objection as to the Jessica Ayars interviews, in interrogatory number 2.
2 The three interrogatories that are the subject of the motion for sanctions are similar to
3 interrogatory number 2. Because the Court had already ruled on the SEC's work-product
4 assertion as to interrogatories seeking information from witness interviews, the SEC was
5 not "substantially justified" to repeat its previously overruled objection.

6 Finally, as to whether an award of expenses would be "unjust," the Court finds that
7 awarding sanctions under these circumstances would be just. This sanctions motion arises
8 from the second motion to compel filed by Murawski on some of the same discovery issues.
9 A sanction can serve as a useful mechanism to counteract duplicative and inefficient
10 litigation. Moreover, the expenses requested here, \$6,942.50, are proportional to the
11 violation. The Court finds that both the attorney's time spent (13.75 hours) and the rate
12 billed (\$460 and \$525 per hour for two experienced attorneys at a reputable San Francisco
13 law firm) on the motion to compel are reasonable. The Court disagrees with Murawski's
14 final contention that the SEC also violated Rule 37(b) by failing to answer the
15 interrogatories. Dkt. No. 93 at 8, n.2. If this were a motion arising from a bad faith failure
16 to comply with a court order, a \$6,942.50 penalty would not be strong enough medicine.

17 In sum, the Court finds that the SEC's interrogatory objections were not substantially
18 justified because the Court previously overruled similar objections. The expenses
19 submitted are reasonable. The Court therefore grants the sanctions motion and orders the
20 SEC to pay Murawski \$6,942.50 within 14 days of this order. Any party may object to this
21 order, but must do so within fourteen days of the date it is filed. Fed. R. Civ. P. 72(a).

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23 IT IS SO ORDERED.

24 Date: September 30, 2013

25 
26 Nathanael M. Cousins
27 United States Magistrate Judge
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